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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/688,292	10/17/2003	Alan M. Zamore	93930-254690	6496
26694	7590	05/29/2009		
VENABLE LLP				
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WASHINGTON, DC 20043-9998				
EXAMINER				
JACKSON, MONIQUE R				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
05/29/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/688,292

Applicant(s)

ZAMORE, ALAN M.

Examiner

Monique R. Jackson

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 13-19 and 35-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11, 13-19 and 35-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. The amendment filed 2/9/09 has been entered. Claims 12, 20-22, 24, and 25 have been canceled. Claims 1-11, 13-19 and 35-48 are pending in the application. It is noted that in the amendment filed 1/28/08, there were two claims listed as Claim 46. The second claim 46 and 47 were renumbered in the subsequent amendment to claims 47 and 48, respectively. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

2. Claims 1-11, 13-16, 18, 35-41, and 47-48 are rejected under 35 U.S.C. 102(b) as being anticipated by Okita et al (USPN 4,822,361.) Okita et al teach a tubular prosthesis having a composite structure comprising a tubular polytetrafluoroethylene (PTFE) having a microfibrinous structure, wherein the PTFE porous tube is produced by extruding the PTFE in tubular form, stretching the tube in the axial direction, with radial expansion being optionally achieved simultaneously or afterward, and sintering by heating the stretched tube while being fixed to prevent thermal shrinkage of the tube, resulting in a fibrous structure which varies continuously across the wall thickness of the tube (Abstract; Col. 3, line 65-Col. 4, line 43.) Okita et al also teach that the tubular prosthesis can include materials that can be absorbed by a living body such as collagen, albumin, chitosan and heparin wherein the chitosan and collagen can be crosslinked with the compounds disclosed (Claims 1 and 5-6.) Though Okita et al do not specifically teach that the tubular prosthesis is compliant or semi-complaint with the compliance curve as instantly claimed, the Examiner takes the position that the tubular prosthesis taught by Okita et al would inherently have the same compliance properties as instantly claimed. Further, though Okita et al

teach a single tubular element, the Examiner notes that the limitations with respect to "the balloon" being "further coupled to a tubular element" or a catheter comprising the "catheter balloon" do not provide any additional structural or material limitations to the axially-restrained tube to differentiate it from the teachings of Okita et al.

Claim Rejections - 35 USC § 103

3. Claims 17, and 42-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Okita et al. The teachings of Okita et al are discussed above. Though Okita et al teach that the tubular element is sintered by heating while fixing or axially restraining the tube, Okita et al do not teach that the distance between the front end and back end of the tube is increased relative to one another as instantly claimed. However, one having ordinary skill in the art at the time of the invention would have been motivated to either maintain the distance by fixing as taught by Okita et al or to sinter while stretching in order to prevent the shrinkage as taught by Okita et al given the reasonable expectation of success. With respect to Claims 42-46, Okita et al teach that the conditions of the stretching and sintering process can be determined to provide the desired profile for the fibrous structure and that radial expansion can be conducted simultaneously or after axial stretching. Though Okita et al do not specifically teach that the resulting tubular prosthesis has a reduced profile as claimed or less expandable portion(s), the Examiner takes the position that one having ordinary skill in the art at the time of the invention would have been motivated to determine the optimum stretching and sintering conditions to provide the desired properties of the tubular prosthesis for a particular end use wherein the claimed structure would flow naturally from the teachings of Okita et al. Further, given that Okita et al.

Response to Arguments

4. Applicant's arguments filed 2/9/09 have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monique R. Jackson whose telephone number is 571-272-1508. The examiner can normally be reached on Mondays-Thursdays, 10:00AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Monique R Jackson/
Primary Examiner, Art Unit 1794
May 26, 2009